IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

J. I. LAMPRECHT and F. M. AIKEN, Trustees,
Appellants,

vs.

SOUTHERN PACIFIC RAILROAD COMPANY and KERN TRADING AND OIL COMPANY, et al.,
Appellees.

In Equity No. 2028

BRIEF FOR APPELLEES

Southern Pacific Railroad Company and
Kern Trading and Oil Company

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STATEMENT OF THE CASE.

This case has been set for argument on the same date as the case of *Burke* v. *Southern Pacific Railroad Company et al.,* No. 1981, for the reason that both appeals involve the same land, virtually the same parties, and are dependent upon the same legal principles; in fact, the plaintiffs in this case appear as trustees to represent persons who were joined with Burke in the attempted location of the land in suit as mining claims fifteen years after the patent at bar had issued to the defendant railroad company.

Why they should appear as crosscomplainants instead of joining as plaintiffs in the suit of *Edmund Burke v. Southern Pacific Railroad Company* is not apparent; but in order to have this entire matter disposed of in one judgment as speedily as practicable, no technical objection has been urged by the defendants to the cross bill.

The cross bill is virtually a copy of the bill of complaint filed by Edmund Burke, with slight changes of

arrangement, but identical in substance. And in the court below the legal arguments presented by Mr. Burke and by counsel for crosscomplainants were alike; and the demurrer to the cross bill was sustained on the same grounds as in the Burke and Roberts cases.

It has therefore been thought advisable to submit by reference the brief filed in this Court by defendants in the Burke case (No. 1981) as their brief on this appeal; as it is thought that no useful purpose would be subserved by repeating herein the statement of the facts and of defendants' points and authorities set forth in the brief filed in the Burke appeal.

For defendants' statement of the case and points and authorities the Court is, therefore, respectfully referred to the brief filed by defendants in the case of *Edmund Burke vs. Southern Pacific Railroad Company et al.,* No. 1981. It is desired in this brief merely to comment briefly in reply to some of the arguments and authorities made use of by the crosscomplainants.

Argument

It may be observed at the outset that crosscomplainants have fallen into the same errors committed by complainant Edmund Burke, in assuming that they could locate mining claims on patented land years after

patent issued, of confounding this collateral attack with a direct attack upon a patent by one having an interest in the land involved at the time the patent issued, and by assuming that the demurrer of defendants admits all matters alleged in the cross bill irrespective of whether they were well pleaded or relevant or material. Allegations relating to things done prior to the patent are not issuable allegations in a collateral attack upon a patent and are consequently not admitted by demurrer, nor can a presumption which is deemed conclusive be overcome in such manner. This is elementary, as will be seen by an examination of the authorities cited by defendants in the Burke case. And it will be observed that the arguments relied upon by them are applicable only to cases of direct attacks upon patents by persons having rights in the land prior to the patent's issuance.

I.

The patent at bar is conclusive upon collateral attack that the defendant railroad company has title to the land embraced by the patent, for it is the final action of the Land Department conveying and confirming the railroad company's title, and could not have been properly issued unless all official duties prior to its issuance had been carried out.

This has been fully covered by defendants' brief in the Burke case, and the Court is respectfully referred to

that brief, as it is desired to make this brief as short as possible. Crosscomplainants' brief does not differ in the ultimate arguments advanced from the brief filed by Edmund Burke; and it is desired in this brief merely to call attention to the contention that a railroad patent is to be given a different effect from one issued under other grants or acts of Congress. The attempted distinctions, inaccurate and unsubstantial, are a practical concession by counsel that the law is overwhelmingly with the defendants in this case.

The substance of crosscomplainants' argument from pages 19-60, is that a railroad company can only acquire mineral land through an adjudication by the Land Department that the land is of the character contemplated by the grant; and that the patent at bar is not an adjudication of that fact because it does not on its face, in terms, state that the Land Department has determined the question of the land's character and does not further state that the land is non-mineral in character.

Before entering upon the argument of that proposition, counsel argue, pages 19-21, that the mining locations alleged to have been made upon the ground at some uncertain date prior to patenting the land excepted the land from the grant. Under points and contentions, subdivision (5), of defendants' brief in the Burke case, all questions appertaining to those alleged locations will be found fully discussed, and the futility

of such allegations and arguments in case of collateral attack by a stranger to the title established. Crosscomplainants in such a case do not strengthen their position by alleging wrongs to others who, it is significant, have made no complaint on their own behalf for seventeen years.

It may be conceded, as argued by crosscomplainants at p. 21, that public officers must do their duty and not transcend their powers, but it is equally true that the Land Department has jurisdiction to decide all claims respecting public lands and to issue patents therefor, and it is not apparent in the case at bar how they have transcended their powers through patenting land that some one at some earlier date had plastered with speculative mining locations. In fact, if the locations had been valid and the land known to be valuable for mineral when the patent issued, it would only be an instance of erroneous conclusion in a case where the Land Department had full jurisdiction; and one that could be corrected in a direct suit for that purpose by the party wronged. It is only in cases of absence of jurisdiction to act at all that the acts of public officials are nullities, and crosscomplainants are citing instances of wrong conclusions, not of absence of power. The cases cited at p. 21 of crosscomplainants' brief are not remotely in point, but the courts have time and again elaborately discussed the contention of counsel, in connection with

the Land Department, and resolved it against their views. As pointed out in defendants' brief in the Burke case, mining claims of record in the Land Department prior to definite location of the road were excepted out of the grant irrespective of their validity, but claims located after the definite location of the road must be passed upon by the Land Department either in patenting the land to the mineral claimants or in patenting it to the railroad company; in other words, the Land Department had full jurisdiction over the land embraced in such claim.

It is conceded, at p. 21 of crosscomplainants' brief that if the Land Department determined the character of the lands and issued patent therefor to the railroad company, the railroad company would be entitled to the land irrespective of its character; but it is argued that they did not decide the land's character in this instance; to which defendants reply that the patent is the unanswerable evidence on collateral attack that the railroad company is the absolute owner of the patented lands, and, as determination of the land's character is a prerequisite of that patent, conclusive of that fact also. In support of their argument, for the purpose of evading the solid wall of decisions supporting defendants' position, crosscomplainants' counsel, between pages 21 and 26, argue that the railroad act is a special act not governed by general laws, and that therefore the rules

applied by the courts to patents issued, and certifications made, under other grants and statutes cannot be applied to railroad patents. If the statutes themselves had defined the effect of the patents and certifications under the different statutes referred to, there might be excuse for the space used in discussing the superseding of special statutes by general ones or *vice versa*; but the *judicial law* in interpreting all of these statutes has said what the effect of patents and certifications shall be because their purpose is to transfer the government title for all time. At page 22, counsel has the following to say of patents issued under other grants and laws:

> "General statutes for the conveyance of public lands provide that the officers of the Interior Department shall convey lands of specified character to individuals having specified qualifications upon satisfactory proof of performance by the applicants of specified duties. In such cases a decision by the officers of the Interior Department that the applicant has the proper qualifications, and has performed the duties which entitle him to the land, and that the land is of the character for which patent is authorized by the statute, is in each instance necessarily pre-requisite to the grant, which is made by the patent, and which such general statutes provide shall be unconditional when made."

And there can be no question but that the same duties are imposed on the Land Department in issuing railroad patents. If there were anything in counsel's contention,

what should be said of the Baca Grant under consideration in Shaw v. Kellogg, 170 U. S. 312, a grant in all its essentials like the indemnity portion of the railroad grant? And it could not be seriously contended that Congress intended different effect to be given to railroad place land patents from that to be given to railroad indemnity land patents.

Just why counsel devote so much attention between pages 26 and 31 of their brief to explaining that the Tarpey, Price County, and other cases cited at page 26-31 held that railroad grants were grants *in praesenti,* passing title as of the date of the grant, is not clear; it is not disputed that mineral land is excluded from the grant at the date of definite location, whether discovered or not at that time, but there can be no doubt either as to the proposition that the patent when issued to the railroad company is, in the language of the granting act, a conveyance and confirmance of title. There is no inconsistency in the two rules; for even as to land which is admittedly agricultural in character at the time of the filing of the map of definite location, the title which vests in the railroad company at the time of the filing of such map is not a complete title in fee simple, but a title which may be defeated, not only by failure to comply with the conditions of the granting act, such as for instance, the condition requiring construction of the road, but is also subject to be defeated by the dis-

covery of mineral thereon sufficient in quantity to render it more valuable for mining than agricultural purposes prior to the issuance of patent. This is true of the entire land grant, for mineral might be discovered upon every portion of it between the time of the filing of the map of definite route and the time of the issuance of patent. As to such land, the patent releases all claim of the Government and passes and confirms a complete fee simple title. As to land in fact mineral, the title does not attach as of the date of definite location of the route, nor at any time subsequent, unless and until the Land Department issues its patent therefor to the railroad company. In such event the legal title passes by the patent, not because of the character of the land, but because the question as to the character of the land was for the Department to determine and because the patent in such case carries with it the presumption that the land is agricultural in character. The legal title thus passed by the patent cannot be defeated by any subsequent discovery of mineral (*Shaw v. Kellogg,* 170 U. S. 312); but if the land was actually known to be mineral prior to the issuance of such patent, the Government may, in a suit brought within the statutory period, have such legal title restored to it upon proper pleadings and proofs, or such legal title may be declared to have been held in trust by the company for any other person who at the time of the issuance of such patent was in such privity with the Government

as that he would have been entitled to patent himself had it not been for the erroneous issuance of patent to the railroad company.

It has just been stated that the patent when issued to the railroad company carries with it the presumption that the land is agricultural in character. This presumption is only *prima facie* and may be overcome by proof in a direct attack by the Government or one in privity with the Government where the patent was issued upon an ex parte hearing without contest and without an actual trial. It is, however, conclusive as against one whose rights had not been initiated until after the patent issued, in other words, as against one who is attempting to collaterally assail the patent; and it is also conclusive even upon direct attack, if the issuance of such patent was the result of a trial before the Department of the Interior to which the person who claims to be aggrieved was a party and who either did or had the opportunity to introduce evidence concerning any disputed questions of fact. In such a case, the decision of the Department upon all questions of fact is conclusive, and it is only when the party aggrieved can establish that the Department of the Interior erred in its conclusions of law upon the facts found by it, that he will be entitled to any relief in any other tribunal.

But there is nothing to be gained by an exhaustive discussion of the respective rules of the Tarpey and Barden cases, for it is settled beyond question that after patent the railroad company acquires a conclusive title, when collaterally assailed, to any mineral land that by chance may be embraced by the patent. Counsel has gone laboriously into this discussion to try to show that a railroad patent differs from other patents and certifications of public lands, conceding, however, at the same time and arguing that in both instances the Land Department must decide the land's character and that when that has been done the patent is in either instance conclusive. And the trend of counsel's argument, pages 31-55, is to the effect that because of the matters heretofore discussed, there must be a different kind of adjudication in the case of railroad patents from that in the case of other patents.

It may be conceded that in the case of railroad patents, as in the case of other patents or of certifications, if the Land Department in any respect does not do its duty in patenting land, the Government or one with disregarded vested rights existing when the patent issued, in the proper manner and within the proper time, may in a court of equity have whatever injustice or wrong that may have been entailed by the neglect righted; but there can be no question, in the light of the decisions, but that a third party cannot speculate

upon such possible wrongs and force the patentee to exhibit the record back of the patent and furnish proof that the public officials did their full duty and committed no error. Yet that is what crosscomplainants are seeking to do in this case.

Nor can there be any question but that the patent itself, or the certification as the case may be, *is* the judgment or the sole record on collateral attack. Nor is it true, as contended at p. 31, that the demurrer admits that the land is mineral in character, for that is not a proper, relevant, or material allegation in a collateral attack on a patent. But it is contended that, having by demurrer admitted the land to be mineral in character, defendants (p. 32) must show that the officers of the Land Department made an erroneous decision in patenting the land to defendant railroad company, which is merely another way of saying that the Interior Department must decide the character of the land. To which the same answer applies—that the patent is the conclusive evidence of title, and of decision and of any other prerequisite to its issuance when collaterally assailed. By what right do crosscomplainants, speculating on a supposed defect in title, say, "prove affirmatively every step taken in the issuance of your title or we will take the land away from you seventeen years after you acquired it"?

And counsel then proceed, between pages 33 and 44, to try to show that the United States Supreme Court in deciding the Barden case was deeply concerned with the distinction between courts of "superior" and "inferior" jurisdiction, and that most of the discussion in that case relating to patents proceeded from a refined and subtle knowledge of that distinction which the court was at great pains to inviolably preserve. If such were the court's concern it succeeded in keeping it well concealed from the writer of the minority opinion, who reviewed and criticized the majority opinion with much thoroughness; nor, as indicated by the argument advanced by Government counsel, were the government attorneys aware of such distinction, or concerned in its preservation.

The majority opinion in the Barden case cited and followed without reserve the prior decisions, relied upon by defendants in this case, on the inviolability collaterally of patents issued under other acts and statutes; and the courts have subsequently without hesitancy applied the Barden case in holding patents and certifications under other acts and grants conclusive collaterally. This should be sufficient answer to counsel's contentions, that the court intended to hold in that case that a railroad patent was to be any different or have any different effect from any other patent or certification finally passing the Government title.

The vice of the argument is due to the selection of expressions without regard to a consideration of the entire case. This is an error often fallen into in considering the Barden case. Counsel in *Shaw v. Kellogg,* 170 U. S. 312, attempted to make similar use of expressions from that case and the Supreme Court then took occasion to state the issues in that case, and effect to be given to it, as follows:

> "Defendant relies largely on the decision of this court in *Barden v. Northern Pacific Railroad,* 154 U. S. 288, in which it was held that lands identified by the filing of the map of definite location as within the scope of the grant made by Congress to that company, although at the time of the filing of such map not known to contain any mineral, did not pass under the grant if before the issue of the patent mineral was discovered. But that case, properly considered, sustains rather the contentions of the plaintiff. It is true there was a division of opinion, but that division was only as to the time at which and the means by which the non-mineral character of the land was settled. The minority were of the opinion that the question was settled at the time of the filing of the map of definite location. The majority, relying on the language in the original act of 1864 making the grant, and also on the joint resolution of January 30, 1865, which expressly declared that such grant should not be "construed as to embrace mineral lands, which in all cases shall be and are reserved exclusively to the United states," held that the question of mineral or non-mineral was open to consideration up to the time of issuing a patent. But there was no division of opinion as to the question that when the legal title did pass—and it passed

> unquestionably by the patent—it passed free from the contingency of future discovery of minerals."

Which does not accord with counsel's views at p. 35 of the brief.

In short, the Barden case does not purport to do other than hold that the Land Department must determine the character of the land, and that its patent will be conclusive on that point. To argue that it must make express findings and state in the patent that the land is non-mineral is to argue that it must do superfluous acts. There is no more reason why it should do so here than in other acts relating to public lands, where, according to counsel's argument the Land Department is also an "inferior" tribunal, yet in such cases counsel concede the mere patent to be conclusive.

And so again, at p. 44, counsel select an extract from the opinion in the Barden case and seek to give it an interpretation that would make the rest of the opinion meaningless; for if the officers of the Government must determine the land's character, how can it be successfully argued that they could avoid doing so by putting a general exception and qualification in the patent? *Shaw v. Kellogg,* 170 U. S. 312, and many other cases are decisive against that interpretation.

And counsel argue further (pp. 44-45), in support of this contention, that if the record did not, and the

patent did not show findings and an expression of the land's character, there would be no way of correcting errors in Land Department decisions. That argument is without support: first, the Government may within the statutory period correct any error by direct suit, either to protect itself or a third person entitled to the land; second, an individual can in direct suit, where his rights have been disregarded do likewise; third, such an individual after contest may have corrected in the courts the Land Department's application of the law to the contested facts, or may attack on any ground upon which a judgment may be attacked in equity; fourth, anyone can attack an absolutely void act. Thus all errors of law in such instances may be corrected; and on *direct* attack the proceedings back of the patent searched for fraud or error.

The jurisdiction of the Land Department in the case at bar appears clearly in the patent, and no erroneous exercise of it appears; but if it did it would take a direct suit by the proper party to correct it. And here again (p. 46-47) counsel overlook the distinction between direct and collateral attack in cases of this character, for it is on direct attack that one after contest in the Land Department may show that the Land Department drew erroneous legal conclusions. And this is followed up by the statement that the demurrer admits the allegation of the cross bill that there was

no adjudication, a matter which for reasons heretofore discussed is not material, proper, relevant, or well pleaded and not admitted by demurrer.

It may be repeated in concluding this branch of the discussion that the patent is the conclusive evidence, record or judgment of title when collaterally assailed, and the attempt of the officers of the Land Department to attempt to qualify the absolute title provided for by the granting act was wholly beyond their power and ineffective for any purpose.

This conclusive effect of the patent is not, as counsel states at p. 54 of the brief, based upon the presumption that the patent does not affirmatively show that the land was adjudged non-mineral, but upon the law that the patent itself is the affirmative judgment of that fact; and the conclusive judgment of that fact when collaterally assailed. And counsel, as repeatedly pointed out, overlook the fact that direct proceedings are provided for the correction of the multitude of imaginary evils outlined by counsel between pages 54 and 60. It may not be amiss at this juncture, however, to remark that the courts have been busy for many years in discussing public land questions and so far the reports fail to disclose where any encouragement has been given to one seeking to speculate on alleged flaws in another's title, although the decisions afford ample protection for one whose rights have been disregarded. As a matter

of fact, if this were a direct suit and the matter material, it would not be difficult to show that the character of the land was determined in this case as in all other cases relating to public lands where the patent is not contested, and the exception put in this particular patent as a matter of routine.

Counsel, at p. 57, again overlooking the distinction between questions of direct and collateral attack, argue that while the Land Department's decisions on questions of fact are conclusive, its decisions on matters of law are not. But that has no application on collateral attack, unless it appears as a matter of law that the Land Department had no jurisdiction over the subject matter. Upon collateral attack the patent shows *prima facie* jurisdiction, that is, that the land is within the limits of the grant and the grant upon which the patent is based. The expression, "conclusive upon the facts but not upon the law", is found in cases of direct attack by parties contesting a patent before the Land Department; and mean that in those cases the Land Department, acting as a quasi-judicial tribunal, has conclusive authority to settle the facts, but if it apply the wrong law the courts will correct it on direct suit. But the ordinary patent, issued without contest, is conclusive collaterally as well for the reason that the quasi-judicial tribunal must have resolved all questions of fact that it was its duty to settle before issuing the patent, as for

the reason that it is the final expression of public officials who are conclusively presumed to have done their duty.

These matters have all received full discussion by the courts in a great many decisions, and a reference to them, particularly those discussing void and voidable patents, and cited in defendants' brief in the Burke case, will show when a patent is void and may be collaterally assailed, and when it is voidable and the proceedings back of it can be examined only on direct suit to show that fact. Counsel have not presented any decision in support of their argument upon this point, and an examination of the decisions will show that they hold decisively against counsel's arguments.

Under any consideration the question of the land's character is one of fact, and the only error that could be attributed even under the improperly pleaded allegations of the crosscomplaint, would be either that they were mistaken as to the land's real character, or that they did not do their full duty in the premises, neither of which questions can be examined into collaterally.

II.

The discussion of *Shaw v. Kellogg,* 170 U. S. 312, and *Cowell v. Lammers,* 21 F. 200, between pages 60 and 76 is along the lines followed in the brief filed by Edmund Burke, and the distinctions sought to be made have been shown in defendants' brief in the Burke case to be

unsound. The Court is respectfully referred to that brief for the reply to counsels' argument in connection with those cases. And the same may be said of the consideration between pages 76 and 81 of the California decisions relative to the exception in the patent and of the Joint Resolution of June 28th 1870.

III.

Pages 81-94 of the brief of crosscomplainants are devoted to discussing the width of the grant, arguing that it is only half as wide as settled and adjusted after much litigation between the Government and the railroad company, and this protracted argument is advanced after counsel admit at p. 88:

> "Now, it is true that all the lands in controversy in this suit are within ten miles of the line of the road as fixed by the map of definite location of the road, and that the road was constructed upon that line and that these lands are within the primary limits under the proper construction of the grant."

This demonstrates that it is purely a moot question in this case, but in response to this argument on the width of the grant and "excess of land" the following is conclusive:

The argument of counsel in this connection is an attempt to give a forced and unnatural construction to the provisions of the grant reading "ten alternate sections of land per mile on each side of the railroad

whenever it passes through any state'' (and the same provision with respect to territories, except that when the road passes through territories, the grant is of twenty sections per mile on each side of the road,) from which counsel argue that ten sections on each side means five on one side and five on the other.

It should be a sufficient answer to this contention to call attention to the fact that the Interior Department has interpreted this and all other grants similarly worded to mean ten sections upon one side and ten sections upon the other; and that is also the interpretation which has been given to the grant by the Government, for all of the overlap cases in which the respective rights of the Government and of the railroad company were litigated were based upon this construction of the granting act.

6 L. D. 351 and *S. P. R. R. Co. v. U. S.,* 183 U. S. 525, relied upon at page 86 of crosscomplainants' brief, do not sustain counsel's contentions. In the Land Decision, the width of the grant was not before Secretary Lamar, and, as often happened in such cases, the intervening even numbered sections were overlooked and the grant referred to as of width equal to the specified odd numbered sections. In the 6 L. D., at page 86, however, Secretary Lamar did have before him the question of the width of the grant and in referring to the order for

survey and withdrawal of the land for *forty miles on each side of the road* he said:

> "Now here was a grant to the free, alternate odd-numbered sections to be found within twenty miles on each side of the road in the States, and within forty miles in the Territories; with the right to take the free odd-numbered sections found within a further limit of ten miles, as indemnity for lands lost in the granted limits. The order was for the survey of the lands 'for forty miles in width' or only to the extent of the granted limits in the Territories, and ten miles beyond the granted and indemnity limits in the States."

And see *S. P. R. R. Co. v. Bell,* 183 U. S. at page 686 for the same construction.

The foregoing quotation from Secretary Lamar's opinion shows the erroneous deduction sought to be made from the order providing for the survey of the grant for forty miles in width discussed at pp. 83-84 of cross-complainants' brief which arises here through the same error involved in counsel's interpretation of the granting act, for the surveyed strip was to be, not forty miles in width, but forty miles on each side of the grant, a total width of eighty miles.

Nor do the provisions of the grant require that all indemnity land should be selected within twenty miles of the lines of the road, but the phrase quoted at page 85 of crosscomplainants' brief has reference to a special mineral land lieu provision found in this grant and the

grant to the Northern Pacific, permitting the selection, in addition to the other lieu provision, of lands in lieu of lands lost because mineral in character, wherever within the place limits of the grant land had been excepted because of an apparent claim thereto at the time of the definite location of the road which was subsequently held to be invalid.

That is the recognized interpretation of the phrase quoted by counsel and land has been patented in accordance with it, as shown by 26 L. D. 452 and other Land Department records.

But counsel argue that this cannot be true, because *K. P. R. Co. v. Dunmeyer,* 115 U. S. 629, and some other cases referred to at pp. 90-91 of the brief hold that lands lost within the place limits of the grant by reason of a claim thereto at the time of the definite location of the road, if such claim is subsequently declared invalid, do not pass under the railroad grant. Counsel overlooks, however, that those decisions all apply to primary lands and that the sole test of the right to select indemnity land is that it be within the indemnity limits provided and be *public land at the date of selection.*

In view of the many decisions interpreting this and similar grants and of the uniform rule under which they have all been finally adjusted, it would serve no

useful purpose to pursue this discussion further, particularly in view of the fact that it is purely a moot question in this case, as counsel admit that the land in suit is within ten miles of the line of road as located and constructed.

Counsel assert, however, that their purpose in endeavoring to establish that the grant is only half as wide as adjusted, is to support their allegation that the railroad company has received more land than it is entitled to under the grant, from which it is argued that the patent is void. Assuming that it were true that the railroad company had received more land than it was entitled to, it would be solely a matter between the Government and the defendant railroad company, for complainant is not in privity with the Government (*Deweese v. Reinhard,* 61 F. 777). And even if the patent were void, the statutes of limitation have rendered it impregnable to attack (*U. S. v. Chandler-Dunbar,* 209 U. S. 447).

It is also a well settled rule that even one entitled to attack a patent must aver with great certainty and particularity all facts necessary to establish its invalidity (*Maxwell Land Grant Case* 121 U. S. pp. 380-81); and the allegation herein that the railroad company has received land in excess of that to which it is entitled is at most but a conclusion.

Further, the allegation says "has received," which might be subsequent to the patenting of the lands in suit, in which case the invalidity, if any, would exist as to the lands subsequently patented and not affect the patent at bar.

IV.

The argument between pages 94-98 of crosscomplainants' brief relating to non construction of the road in 25 mile sections is fully discussed in defendants' brief in the Burke case, to which the Court is respectfully referred.

V.

The discussion of the statutes of limitation between pages 98 and 105 of crosscomplainants' brief, is also fully answered by defendants' brief in the Burke case.

It is respectfully submitted that the demurrer to the cross-bill should be sustained.

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